



CITY OF SANTA BARBARA

COUNCIL AGENDA REPORT

AGENDA DATE: October 27, 2009

TO: Mayor and Councilmembers

FROM: Chief's Staff, Police Department

SUBJECT: Appeal Of The Fire And Police Commission's Approval With Conditions Of The Nightclub Dance Permit Renewal For Velvet Jones

RECOMMENDATION:

That Council deny the appeal of Craig Jenkins and uphold the Fire and Police Commission's decision to approve the nightclub dance permit renewal with certain conditions for Velvet Jones at 423 State Street.

DISCUSSION:

The subject appeal involves the approval of a nightclub dance permit renewal for Velvet Jones at 423 State Street. On August 27, 2009, the Fire and Police Commission approved the dance permit renewal with the conditions recommended by the Police Department. The applicant, Craig Jenkins, has appealed the Fire and Police Commission's decision to impose conditions on the dance permit. (See Attachment 1)

BACKGROUND:

Velvet Jones was originally issued a dance permit in June 2001. The dance permit was issued without conditions. In February 2008, the Santa Barbara Municipal Code provisions pertaining to nightclub dance permits was amended to include a requirement for dance permit holders to renew the permits annually. The June 2009 renewal application submitted by Velvet Jones was the first such renewal application for the premise.

On June 2, 2009, Craig Jenkins ("Applicant") submitted a nightclub dance permit renewal application to the Santa Barbara Police Department for the property located at 423 State Street. Mr. Jenkins is also the owner of the nightclub at that location, dba "Velvet Jones." The Applicant obtained all necessary owner signatures for the application, and the Applicant and Ryan Purdy, the nightclub's General Manager and Security Manager, underwent Live Scan fingerprinting, as required by Santa Barbara Municipal Code § 5.20.050(A)(12).

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Police Department records indicate that there have been 22 incidents reported to the Police Department involving Velvet Jones from August 7, 2007 through August 7, 2009, all of which generated citations. Of those, 6 reflect positively on the business, that is, 4 incidents in which club security reported false ID's to the Santa Barbara Police Department, and 2 incidents in which intoxicated patrons were either refused entry or ejected from the premise. Two of the incidents were reports of lost property within the club, and are considered incidental to the location. The remaining 15 incidents, some of which are considered "neutral" by the Police Department, include 4 incidents in which a security member was the victim of an altercation with patrons; 3 battery reports involving altercations between patrons and security; a battery report in which a patron complained of excessive force by security; an incident in which patrons reported their belief that their drinks had been tampered with or drugged; an incident in which a patron vandalized the club's sound equipment; an incident in which club staff reported a patron who possessed a concealed knife; 1 Open Container report in which a patron left the bar with an opened beer; an incident, currently under review by Alcoholic Beverage Control (ABC), pending video surveillance footage which, at the time of this report, has not been provided to ABC by the nightclub, in which nightclub staff may have served alcohol to an overly-intoxicated patron; and an incident, reported to the Police Department by club staff, in which a minor was found in possession of alcohol inside the nightclub during the nightclub's "18 and over" nights, after having obtained a wristband in the club indicating that the patron was over 21.

In addition to premise-specific incidents pertaining to minors and alcohol during the time frame in which the premise held a Type 47 license (general alcohol, restaurant), there were 13 additional incidents involving minors and alcohol on the 400 block of State Street for the one year period from August 2008 through August 2009: 2 reports of public intoxication, 6 incidents in which intoxicated minors were cited for urinating in public, and 5 incidents in which intoxicated minors between the ages of 18 and 20 were admitted to the Sobering Center. There is no allegation that the minors involved in these incidents were served or consumed alcohol at Velvet Jones prior to or during these incidents.

On August 27, 2009, the nightclub dance permit renewal request was heard at the Fire and Police Commission ("the Commission") meeting.

Fire and Police Commission Action:

At the Commission meeting, Police Department staff recommended that the following conditions be added to the dance permit to enhance public safety and mitigate noise and area crime issues:

1. Music and/or entertainment shall not be audible beyond 50 feet from the premise in any direction.
2. The rear door must be kept closed, but unlocked, at all times during the hours of dancing.

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3. Except in the case of emergency, no patrons shall enter or exit the premise through the rear patio door.
4. No patrons may loiter in the rear alleyway.
5. A minimum of 3 security guards must be on duty during hours of dancing Sunday through Wednesday nights.
6. A minimum of 5 security guards must be on duty Thursday, Friday, and Saturday nights from 10:00 pm until the close of business.
7. No live entertainment, dancing, or the use of an amplifying system or device shall be permitted on any patio or outdoor area.
8. Petitioner(s) shall police the area under their control once an hour to prevent the loitering of persons about the premises.
9. Licensee is responsible for maintaining an orderly line of patrons awaiting entry into the premises. The queue of perspective patrons must not block passage of pedestrians on the public walkway, nor may it extend into any nearby street.
10. Dancing is prohibited after 11:00 pm nightly when patrons under the age of 21 years of age are on premise.

Mr. Jenkins and Mr. Purdy both spoke in opposition to the conditions recommended by the Police Department. They stated that such conditions would increase their payroll, would put them in a double-jeopardy situation because some of the recommended conditions mirror conditions on the business's ABC liquor license, and argued that the conditions seemed to be unfair for a business which is well-run.

Two members of the public, Kay Morter, general manager of the Holiday Inn Express, and Suzie Thompson, owner of a residence on the 400 block of Fig Avenue, spoke in support of the conditions recommended by the Police Department.

Following the discussion, the Commission voted unanimously to approve the permit with the conditions recommended by the SBPD. (See Attachment 2)

Appellant's Position:

Craig Jenkins, Applicant, filed an appeal protesting the conditions imposed on the dance permit by the Commission (see Attachment 1). In summary, the Applicant appealed on the basis of the following:

- The business has operated responsibly for 9 years without conditions.
- Some of the imposed conditions are similar, but not identical, to those conditions imposed on the premises by the ABC for the liquor license, thereby potentially subjecting the business to "double jeopardy" for violations of these similar conditions.
- Some conditions will increase business costs.
- Some conditions are already enforced without being formally imposed.
- The condition to limit dancing to 11 pm when patrons under 21 years old are on premise would cause a dramatic decrease in revenue and would make it difficult

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for the nightclub to meet the ABC standard of having greater food sales than alcohol sales.

Staff's Position:

The Entertainment District has a high concentration of ABC licenses and dance permits as compared to other areas of the City. As such, it requires considerable Police resources on most evenings from approx 10:00 pm to 3:00 am. In considering this renewal application, the Santa Barbara Police Department reviewed not only the crime statistics for this specific premise, but for the surrounding area as well. This review revealed, as indicated by the 13 incidents listed above, that "18 and over" nights generally contribute to increased criminal activity in the downtown area.

Per SBMC §5.20.080(A)(9), conditions may be imposed upon nightclub dance permittees when "Such other conditions or measures related to public health, safety, and welfare as the Chief of Police may deem appropriate which may be needed to maintain appropriate security within the establishment (and public areas immediately adjacent to the establishment) or needed to minimize adverse noise impacts on the neighboring property owners or residents." Therefore, as nightclub dance permits have come up for renewal, it has been the practice of the Fire and Police Commission, under the recommendation of the Police Department, to impose similar conditions on each nightclub dance permit, thereby creating substantial uniformity among the dance permits in the downtown area. In keeping with this practice, Police Department staff believes that all of the conditions at issue in this appeal, which are similar to those imposed on other downtown-area nightclubs, including the condition that prohibits dancing after 11:00 pm nightly when patrons under the age of 21 years are on premise, will mitigate some of the negative impacts the operation of the nightclub has on the surrounding area.

CONCLUSION:

Staff recommends that the Council deny the appeal and uphold the decision of the Fire and Police Commission to approve the nightclub dance permit renewal with conditions as set forth herein.

ATTACHMENTS:

1. Letter by appellant Craig Jenkins
2. Copy of Velvet Jones' nightclub dance permit renewal letter.

PREPARED BY: Riley Harwood, Police Sergeant

SUBMITTED BY: Camerino Sanchez, Chief of Police

APPROVED BY: City Administrator's Office

RECEIVED

Velvet Jones
423 State Street
Santa Barbara, CA 93101

SEP 09 2009
2:40 pm BA
CITY CLERK'S OFFICE
SANTA BARBARA, CA

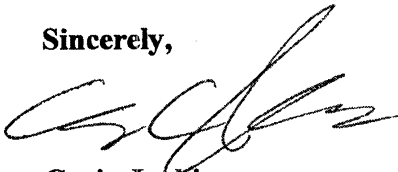
Meeting Date: September 1st, 2009

Velvet Jones is a live music venue that was established in December of 2000. In the last 9 years, we have only received 2 citations; the most recently in 2005. We have proved to the Police and Fire Commission beyond a shadow of a doubt that we are not a part of the problem that these restrictions were set out to solve. After extensively reviewing all of our "22 offenses" in the last 2 years, not one of them proved us to be negligent or incompetent in running a safe and efficient nightclub. In reviewing the 13 additional offenses that occurred on the 400 block involving minors and alcohol, 11 occurred on nights we weren't open and the remaining 2 occurred on nights that we were 21+. We have one of the best track records on State Street and are being treated the same as the nightclub with the worst track record. Even after supportive testimony from Captain Torres, Sgt. Harwood, and Kay Mortar from the Holiday Inn directly behind us, the Commission still unanimously voted for restriction implementation.

We are appealing these restrictions that have been put on our dance permit by the City of Santa Barbara. Restrictions 1-4, and 7 have already been put on our liquor license and would put us in a double jeopardy situation in the event that one of them is violated. Restrictions 5 and 6 are forcing me to increase my payroll regardless of how many patrons we have in the building. Restrictions 8 and 9 we enforce anyway. Restriction 10 would make it very difficult for us to honor previous restrictions on our ABC license regarding percentages of alcohol to non-alcohol sales, in addition to cutting our annual revenue by approximately 30%.

Keeping underage patrons away from alcohol is a top priority for us. We are committed to providing a safe environment for all to come and enjoy live music and would like to continue for years to come. In conclusion, we feel that our dance permit should remain unrestricted and that the restrictions on our liquor license are adequate to helping keep the peace in the lower State Street corridor. Thank you.

Sincerely,



Craig Jenkins
Velvet Jones
(805) 637-8148

September 1, 2009

Craig Jenkins
Velvet Jones
423 State St.
Santa Barbara, CA 93101

RE: Dance Permit Renewal for Velvet Jones, 423 State Street, Santa Barbara, CA 93101

Dear Mr. Jenkins:

Your Dance Permit at **423 State Street** has been renewed per SBMC Section 5.20.110. The new expiration date for this permit is June 30, 2010. The following conditions apply:

1. Music and/or entertainment shall not be audible beyond 50 feet from the premise in any direction.
2. The rear door must be kept closed, but unlocked, at all times during the hours of dancing.
3. Except in the case of emergency, no patrons shall enter or exit the premise through the rear patio door.
4. No patrons may loiter in the rear alleyway.
5. A minimum of 3 security guards must be on duty during hours of dancing Sunday through Wednesday nights.
6. A minimum of 5 security guards must be on duty Thursday, Friday, and Saturday nights from 10:00 pm until the close of business.
7. No live entertainment, dancing, or amplifying system or device shall be permitted on any patio or outdoor area.
8. Petitioner(s) shall police the area under their control once an hour to prevent the loitering of persons about the premises.
9. Licensee is responsible for maintaining an orderly line of patrons awaiting entry into the premises. The queue of perspective patrons must not block passage of pedestrians on the public walkway, nor may it extend into any nearby street.
10. Dancing is prohibited after 11:00 pm nightly when patrons under the age of 21 years are on premise.

This permit is strictly limited to allow only the occupant load for the premises as is approved by the Santa Barbara City Fire Department. Business shall be conducted in a manner that will not violate any provisions of the California Alcoholic Beverage Control Act, providing against the sale of alcohol to minors (§25658) maintaining the public health, morals, convenience and safety (§25601); and taking reasonable steps to correct any objectionable conditions on the premises and immediately adjacent to the premises (§24200).

For the protection of public health and safety, no dancing shall take place in or upon any location, area or surface other than those locations, areas and surfaces that have been approved for occupancy load/dancing by the Fire Department or Building and Safety Department. Dancing in or upon an unapproved location, area or surface shall be deemed a violation of the terms and conditions of the permit and cause for the review, suspension, amendment or revocation of this permit at the discretion of the Fire & Police Commission Board. If a change in the location of approved dancing areas is desired, the applicant must re-apply to the Fire and Police Commission for approval of these changes. Such application shall require approval of the Fire Department and Building and Safety prior to being accepted for review by the Fire and Police Commission Board.

Any complaints about noise, litter, traffic problems, disturbances, damage to property, injuries to persons, or failure to cooperate with peace officers under circumstances related to the operation of this business will subject this permit to review, amendment, suspension, or revocation, at the discretion of this Commission. If the business changes ownership or address, a new permit must be obtained from this Commission and a new permit must be obtained from the Tax and Permit Office at City Hall. This permit may not be transferred to any successor interest in the business. Any other change must be reported in writing to the Commission.

NIGHTCLUB DANCE PERMIT APPEALS. The denial or approval (including any conditions imposed thereon) of any application for a Nightclub Dance Permit under this Chapter by the Board of Fire and Police Commissioners may be appealed to the City Council by the applicant or by any interested person pursuant to the provisions of Section 1.30.050 of this Code. This right of appeal shall also include an action taken by the City with respect to the renewal or non-renewal of a Nightclub Dance Permit.

A copy of Santa Barbara Municipal Code section 1.30.050 is attached for your reference.

This permit is issued under the authority of the Santa Barbara Municipal Code, Chapter 5.20, § 5.20.010 through §5.20.190, inclusive, and subject to all other applicable City, County and State laws, ordinances, rules, and regulations.

Please note instructions for posting the enclosed Dance Permit.

Per SBMC §5.20.120 - Display of Dance Permits.

"A dance permit issued pursuant to this Chapter shall at all times be publicly displayed in a conspicuous place within the dance establishment for which it was issued. In addition, a copy of the Permit and any conditions of approval shall be immediately produced and made available upon the request of any City Fire Inspector or City Police Officer." (Ord. 5445, 2008)

FIRE & POLICE COMMISSION

APPROVED

Barbara A. Sansone
Secretary to the Commission

Camerino Sanchez
Chief of Police

cc: Tax & Permit Office
City Attorney
Police Special Investigations
Fire & Police Commissioners